

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/19/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000724

FILED: _____

HARRY MITCHELL

KENNETH S COUNTRYMAN

v.

STATE OF ARIZONA

ROGER KEVIN HAYS

CHANDLER JUSTICE COURT

MINUTE ENTRY

CHANDLER JUSTICE COURT

Cit. No. #01-00390MI

Charge: POLITICAL SIGNS-TAMPERING

DOB: N/A

DOC: 11/06/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since oral argument on April 3, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record

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of the proceedings from the Chandler Justice Court, and the Memoranda and arguments submitted by counsel.

Appellee, Harry Mitchell, is a State Senator representing Legislative District 27 who ran for re-election in the general election of November, 2000. Appellee was charged with Removing the Political Signs of a Candidate for Public Office in violation of A.R.S. Section 16-1019(A). The statute makes it a criminal offense for any person to "knowingly remove, alter, deface or cover any political sign for any candidate for political office." Both parties agree that the facts in this case are not in dispute: Appellee removed a sign which was placed in front of his own campaign signs which contained only the phrase "Voted For Alt Fuels Fiasco". This sign had been placed in front of Appellee's campaign signs by his opponent's supporters. Appellee filed a Motion to Dismiss the charge. The trial court heard oral argument on August 15, 2001 and at the conclusion of the hearing granted the Motion to Dismiss. The State has filed a timely Notice of Appeal in this case.

The precise issue presented to this court on appeal is whether the trial court erred in granting Appellee's Motion to Dismiss, finding that the sign "Voted For Alt Fuels Fiasco" was not a political sign and did not promote a political candidate and, therefore, would not support a criminal charge.¹

In matters of statutory interpretation, the standard of review by an appellate court is *de novo*.² An appellate court must not reweigh the evidence presented to a trial court.³

In reviewing the trial court's interpretation of A.R.S. Section 16-1019, this court is guided by general principles of statutory construction which require that this court liberally construe a statute so as to effect the legislative intent and to

¹ See R.T. of August 15, 2001 at page 19.

² In re: Kyle M., _____ Ariz. _____, 27 P.3d 804 (App. 2001); see also, State v. Jensen, 193 Ariz. 105, 970 P.2d 937 (App. 1998).

³ Id.

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promote justice.⁴ A primary function of an appellate court is to determine the legislative intent and give effect to that legislative intent.⁵

The difficult question is whether the "Voted for Alt Fuels Fiasco" sign was a "political sign" within the meaning of A.R.S. Section 16-1019. Appellee has argued that the "Voted for Alt Fuels Fiasco" sign does not independently convey any message. Appellee argues that it only conveys a message when placed in proximity to or leaned against Appellee's own campaign signs. Appellant's construction and interpretation appears to be well reasoned: the sign removed by Appellee (which forms the basis for the criminal charge) has no independent political meaning or significance. That sign standing alone is not a political sign for any purpose.

Finding no error in the trial judge's dismissal of the criminal charges in this case,

IT IS ORDERED affirming the judgment of the trial court dismissing this matter.

⁴ See A.R.S. Section 1-211.

⁵ Calvert v. Farmers Insurance Co., 144 Ariz. 291, 697 P.2d 684 (1985).